

INFORMATION LETTER

Not for
Publication

NATIONAL CANNERS ASSOCIATION

For Members
Only

No. 1238

Washington, D. C.

June 11, 1949

Ruling Issued on Overtime for 'Show-Up' and 'Call-Out' Pay

The Wage and Hour Administration has just issued an interpretation to clarify the computation of overtime compensation for "show-up" and "call-back" pay. "Show-up" or "reporting" pay is defined as a payment given to an employee for reporting to work at his scheduled starting time when he is not provided with the expected amount of work. "Call-back" or "call-out" pay is an extra payment given to an employee for responding to a call from his employer to perform extra work where there has been no previous arrangement for such extra work.

A typical "show-up" pay provision in an employment contract might provide that an employee reporting for scheduled work will receive a minimum of four hours' work or pay. Assuming an hourly rate of \$1.00 an hour, under this provision in the case where there was only two hours' work in one day, the employee would be paid for four hours, or \$4.00. The new interpretation makes it clear that of this amount the \$2.00 which is paid for the two hours actually worked may be credited toward straight time or overtime pay for the week, as the case may be. But the other \$2.00, which was not paid for hours actually worked, cannot be credited toward

(Please turn to page 232)

Raw Products Research Notes

Information of interest to canners and their field men on such subjects as DDT and mercury residues on fruits and the effect of hormones in retarding pre-harvest drop of fruits is contained in the June 11 issue of *Raw Products Research Notes*, now available to members on request directed to the Association's Raw Products Bureau. Other subjects included are effects of hormones on tomatoes and seed treatments for the control of wire worm and seed-corn maggot.

This information has appeared in recent issues of scientific journals, state and federal experiment station bulletins and circulars, and indicates recent advances in agricultural methods with which canners may wish to keep in touch.

Congress Trying to Clarify Pricing Confusion During Present Session

Congressional efforts to enact permanent legislation to clarify the legal rules controlling delivered price selling and freight absorption during the present session are proceeding rapidly. The interest of the canning industry in these subjects centers largely in the legal right to sell on a delivered basis and to absorb freight in f.o.b. cannery sales in order to meet competition in good faith. (See INFORMATION LETTER No. 1218, January 8, 1949, Page 1; No. 1219, January 26, 1949, Pages 13-18; No. 1220, February 5, 1949, Page 101). Up to June 1, 1949, it appeared that Congress would defer efforts to resolve the current uncertainties and instead

enact moratorium legislation pending further study of these complicated questions. (See INFORMATION LETTER No. 1235, May 24, 1949, Page 209).

Extension of Tin Controls Requested by Administration

Legislation to extend the Administration's authority to allocate tin and tin products for another year was introduced on June 6 by Chairman Maybank of the Senate Committee on Banking and Currency. Existing authority for tin controls is scheduled to expire this June 30.

In transmitting the draft of a proposed bill to Congress, Secretary of Commerce Charles Sawyer stated that the interruption of production abroad "raises a serious threat to our stockpile and to the national economy." He also stated his intention to exercise the controls "only while serious stoppages of production affect our national security and the stockpile objectives."

The Maybank bill is numbered S. 1994. A companion measure, H. R. 5044, was introduced by Chairman Spence of the House Banking and Currency Committee.

N.C.A. Buildings Fund

Contributions and pledges to the N.C.A. Buildings program on the part of 82 firms in the canning machinery and supplies field totaled \$602,742.04 on June 10, 1949. The firms which have made contributions and pledges are listed on page 231.

Both the Senate and House Judiciary Committees had recommended passage of moratorium legislation. But on May 31 when the Senate moratorium bill was being debated, Senator O'Mahoney (Wyo.) proposed that there be substituted a bill which he had prepared for permanent legislation to solve the problem. This bill was introduced late on May 31, was considered in a series of informal conferences among interested Senators on the morning of June 1, and passed by the Senate later that day. During the course of the debate, the O'Mahoney bill was drastically changed by the adoption of several amendments proposed by Senator Kefauver (Tenn.).

On June 7 a subcommittee of the House Judiciary Committee held brief hearings on the O'Mahoney bill, as passed by the Senate, and reported the bill to the full committee with numerous amendments proposed by the Department of Justice. Final action by the House Committee is scheduled for Tuesday, June 14, and early House enactment is anticipated.

While the form of any final enactment is subject to future developments, the wide industry interest in the subject of delivered pricing, freight absorption, and the right to meet competition warrants a preliminary analysis of the bill passed by the Senate and of

CONGRESS

the House subcommittee proposals to change it.

Legal challenge to the use of delivered price selling, freight absorption, or the meeting of competition was grounded upon three possible charges—that an illegal conspiracy to use a particular method of sale existed among competitors in violation of the Sherman Act; that even where sellers did not conspire, the use by most of the sellers in the industry of the same method of delivered pricing, resulting in identical prices to buyers, was an “unfair method of competition” in violation of the Federal Trade Commission Act; and that the use of these selling methods by an individual seller might result in illegal price discriminations which injured competition in violation of the Robinson-Patman Act. The possibility of an unlawful price discrimination being found was further complicated by two recent court decisions. In the *Morton Salt* case the Supreme Court had suggested that where two different prices were charged, a violation might occur where a mere “possibility” rather than a “substantial” probability of competitive injury was found. In the *Standard Oil of Indiana* case, decided last January, both the Trade Commission and the Court of Appeals for the Seventh Circuit had held that a seller who lowered his price to meet competition in good faith might still be acting unlawfully if the difference in price “substantially affected competition”. Taken together, these two decisions meant that competitively significant price difference might in a particular case turn out to be illegal.

Senator O'Mahoney's bill sought to deal with all three of these legal difficulties. It would amend the Federal Trade Commission Act so as to provide that any seller, “acting independently,” could sell at delivered prices or absorb freight, without being chargeable with engaging in an “unfair method of competition”. The specific exceptions were that no seller could use these selling methods to carry out any “monopolistic, oppressive, deceptive, or fraudulent practice.” This provision confirms the law that a conspiracy to use these selling methods is still illegal, and that the Federal Trade Commission, as well as the Department of Justice, may proceed against such a conspiracy.

In its remaining sections, the O'Mahoney bill as introduced, would amend the Robinson-Patman Act in important

respects. It provided that the use of delivered price selling or freight absorption to meet competition in good faith was not to be considered unlawful price discrimination—again subject to the seller acting independently and not in collusion with other sellers. More than this, the O'Mahoney bill provided that a seller may meet competition in good faith by charging a price either “above or below” the price of his competitor where the differential represented one customarily maintained by the seller.

On the floor of the Senate, however, there was included in this part of the O'Mahoney bill a further provision that the permission to meet competition in good faith was not to apply where the effect of any freight absorption or price reduction “will be to substantially lessen competition.” This provision, suggested by Senator Kefauver, was included in two sections of the bill. It incorporates the rule of the *Standard Oil of Indiana* decision which has not as yet been reviewed by the Supreme Court. The effect of this Senate floor amendment would be to make the right to meet competition in good faith dependent upon what the Federal Trade Commission or the court might conclude in any particular case to be a substantial lessening of competition. From this point of view the O'Mahoney bill, as passed by the Senate, is believed by many likely to add greater confusion.

The bill, however, clarifies the law with respect to the meaning of “price” and “delivered price”. It is less clear with respect to the definition of freight absorption. Lastly, the original proposal to abrogate the rule of the *Morton Salt* case was changed on the floor of the Senate to provide that there be substantial evidence of the specified effect, without resolution of the question whether the required effect must be a “possibility” or “probability” of injury to competition.

On June 8 a subcommittee of the House Judiciary Committee held hearings on the O'Mahoney substitute proposal. Senator O'Mahoney appeared to urge the enactment of his bill. The head of the Anti-Trust Division of the Department of Justice appeared, endorsed the bill, and more importantly recommended that the Kefauver amendments be eliminated so as not to deny to sellers “the opportunity to make sales in good faith competition with other sellers”. He also recommended that the bill be changed to require that the injury to competition must be “a reasonable probability of the specified effect.”

Later on June 8 the subcommittee,

in executive session, voted to report the O'Mahoney bill to the full House Judiciary Committee amended in accordance with the suggestions of the Department of Justice. On June 9 the full committee began its consideration, and deferred final action until Tuesday, June 14.

In a press conference following the meeting of the subcommittee, Congressman Walter (Pa.) announced that if the full committee affirms the action of the subcommittee, he would request the Rules Committee of the House to issue a rule permitting the substitution of the amended O'Mahoney bill for the pending moratorium bill, H. R. 2222. Congressman Walter said further that early House consideration would be asked and that he thought House sentiment would result in early passage. Congressman Wright Patman (Tex.), however, has indicated that he and others are opposed to the O'Mahoney bill both as passed by the Senate and amended by the subcommittee of the House Judiciary Committee.

As passed by the Senate, the O'Mahoney bill would probably contribute further to the legal confusion now obtaining on delivered price selling, the absorption of freight, and the meeting of competition in f.o.b. canneries. There are many who believe, however, that as proposed to be reported to the House, the bill would resolve many of the troublesome issues in this field for the independent seller.

Expiration of Controls

With the transmittal to Congress of the draft of proposed legislation to continue executive authority for the exercise of tin controls, the Administration indicated a willingness to allow existing authority over transportation to lapse.

ODT orders were suspended April 16 (see INFORMATION LETTER of April 9, page 159) and it was provided then that these orders would be permanently revoked on June 30.

Export controls were extended to June 30, 1951, by P. L. 11, approved February 26 by President Truman.

Increase in License Fees

The Department of Agriculture has recommended to Congress that the Perishable Agricultural Commodities Act be amended to provide for an increase in the amount of the annual license fee from \$10 a year to \$15 and for the establishment of a separate

fund for the administration of the act. At present, the license fees are paid into the general fund of the U. S. Treasury. Under the Department's proposal, the fees would go into a special fund to defray administrative costs. Thus, annual appropriations for the administration of the law would no longer be necessary.

Legislation to carry out the USDA recommendation has not been introduced.

PUBLICITY

Canners' Exhibit Spotlights Nutrition in Canned Foods

The N.C.A. Western Branch Laboratory and the Canners League of California jointly staged an exhibit, pointing to the nutritive values of canned foods, at the headquarters hotel of the American Public Health Association meeting in Los Angeles May 30-31 and June 1. A large display panel headed "Good Nutrition with Canned Foods" was exhibited over the width of the booth.

Attendance of over 1,000 was reported at the meeting, and more than 200 requested copies of N.C.A. publications on recipes, nutrition, education and sanitation, which also were on display.

A feature poster emphasized the year-'round availability, economy, appetizing character and convenience of canned foods, and an accompanying display showed sample tin and glass containers of the canned products. Two panels illustrated continuous improvement through research and listed grants made under the N.C.A.-C.M.I. nutrition research program.

The following N.C.A. publications were exhibited, with a notice that copies would be supplied to those who register for them:

The Story of the Canning Industry, Nutritive Values in Canned Foods, Canned Foods Tables, Tempting Recipes Using Canned Foods, Canned Foods Recipes for Serving Fifty, Information for the Canned Foods Shopper, Canned Salmon, Practical Recipes Using Canned Foods, School Lunch Recipes Using Canned Foods, Canned Foods Manual for Teaching, and Today's Canned Foods.

Full color transparencies of dishes prepared from canned foods were displayed on a shadow box at the entrance to the booth. These photographs proved to be an excellent attraction.

Non-Canner Contributors to N.C.A. Buildings Fund

Following is a list of the 82 firms who thus far have generously advanced the program to modernize the research facilities of the Association:

Box Manufacturers—\$28,606.04.

California Container Corporation
Container Corporation of America
Fibreboard Products, Inc.
Gaylord Container Corporation
Inland Container Corporation
Kleckhefer Container Company
F. J. Kress Box Company
Planters Manufacturing Co.
Union Bag & Paper Corporation

Container and Closer Manufacturers—\$395,000.

American Can Company
Armstrong Cork Co.
Ball Brothers Company
Continental Can Co.
Crown Can Co.
Crown Cork and Seal Co.
Hazel-Atlas Glass Co.
Heekin Can Co.
Litchford-Marble Glass Co.
Owens-Illinois Glass Co.
Tygart Valley Glass Co.
The White Cap Co.

Label Manufacturers—\$22,100.

G. A. Ackermann Printing Co., Inc.
The Calvert Lithographing Co.
Commercial Printers, Inc.
H. S. Crocker Co., Inc.
Forbes Lithograph Co.
Gamse Lithographing Co.
Hammer Lithographing Corp.
International Playing Card & Label Co., Inc.
Michigan Lithographing Co.
Muirson Label Co., Inc.
Multi-Colortype Co.
The Nevins-Church Press
Piedmont Label Co., Inc.
Ridgeway Lithograph Co.
Rossotti Lithographing Co., Inc.
Schmidt Lithograph Co.
Simpson & Doeller Company
Stecher-Traug Lithograph Corp.
U. S. Printing & Lithograph Co.
Wilmanns Lithographing Co.

Machinery Manufacturers—\$34,980.

Atlas Pacific Engineering Co.
Barry-Wehmiller Machinery Co.
Burt Machine Co.
Chisholm-Ryder Co.
J. L. Ferguson Co.
Food Machinery & Chemical Corp.
Frank Hamachek Machine Co.
Horix Manufacturing Co.
Lee Metal Products Co., Inc.
A. K. Robins & Co.
Scott Viner Co.
Sinclair-Scott Co.
Tri-Clover Machine Co.
U. S. Bottlers Machinery Co.
Urschel Laboratories
Waukesha Foundry Co.

Steel Companies—\$34,000.

Carnegie-Illinois Steel Co. (U. S. Steel)

Tennessee Coal, Iron & Railroad Co. (U. S. Steel)

National Steel Corp. (Weirton)
Republic Steel Corp.
Jones & Laughlin Steel Corp.
The Youngstown Sheet & Tube Co.
Inland Steel Co.

Miscellaneous Suppliers—\$38,056.

Associated Seed Growers, Inc.
The Canning Trade
California & Hawaiian Sugar Co.
Corn Products Refining Co.
Cornell Seed Co.
Dewey & Almy Chemical Co.
The Diversey Corp.
Gallatin Valley Seed Co.
Lawrence Warehouse Co.
Northrup, King & Co. (Garden Seed Division)
Rogers Brothers Seed Co., Inc.
Savannah Sugar Refining Corp.
Spreckles Sugar Co.
W. J. Stange Co.
Taylor Instrument Companies
Vance Publishing Co.
Wallace & Tiernan Co., Inc.
Lansing B. Warner, Inc.

SUPPLIES

Relaxation of M-81

Relaxation of the Commerce Department's Allocation Order M-81 to permit heavier tin coatings on cans for certain canned foods, and for other purposes, was announced June 3 by the Department's Office of Domestic Commerce. The orders were effective immediately.

The newest changes in M-81 permit the use of heavier tinplate in containers for the following canned foods:

Apples, asparagus, baby foods, dry beans without tomato sauce, red cherries, citrus concentrate, citrus pulp and peel, lemon juice, lime juice, nectars, dried prunes in syrup, prune juice, hominy, lentils, pastes and condiments, plum pudding, mincemeat, potato salad, pickles, sauerkraut, turkey and chicken, herring, pilchards and sardines, and pickled fish.

Another change permits the Army and other armed services and the Department of Agriculture to purchase and use cans of any specifications for their food products, many of which are shipped to areas where climatic conditions are hard on tinplate and storage facilities are inadequate.

These changes in M-81 were published in the *Federal Register* of June 6.

